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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 THE BANK OF NEW YORK MELLON,
8 Plaintiff(s),
9 v.
10 TAYLOR WALES, et al.,
11 Defendant(s).

Case No. 2:17-CV-2896 JCM (GWF)

ORDER

12
13 Presently before the court is defendants Taylor Wales, First California Mortgage Company,
14 Los Prados Community Association (“Los Prados”), and Federal National Mortgage Association’s
15 (collectively “defendants”) motion to dismiss. (ECF Nos. 27, 28, 29, 55). Plaintiff Bank of New
16 York Mellon (“BNYM”) has filed a response (ECF No. 44), to which defendants replied (ECF
17 Nos. 45, 46, 47, 56).

18 Also before the court is BNYM’s motion for leave to file supplemental authorities. (ECF
19 No. 61). Defendant’s have not filed a response and the time to do so has passed.

20 **I. Facts**

21 This action arises from a dispute over real property located at 5253 Saranac Road, Las
22 Vegas, Nevada 89130 (“the property”). (ECF Nos. 1, 20).

23 On March 9, 2005, Susan and James Pharo (“the Pharos”) refinanced the property with a
24 loan in the amount of \$252,000.00 from Home Loan Center, Inc. dba Lending Tree Loans
25 (“Lending Tree”). (ECF Nos. 20, 27). Lending Tree secured the loan with a deed of trust, which
26 it recorded with the Clark County recorder’s office on March 17, 2005. *Id.* Thereafter, BNYM
27 acquired all beneficial interest in the deed of trust via an assignment, which BANA recorded with
28 the Clark County recorder’s office. *Id.*

1 On March 23, 2012, Los Prados, through its agent Nevada Association Services, recorded
2 a notice of delinquent assessment lien (“the lien”) against the property for the Pharos’ failure to
3 pay Los Prados in the amount of \$1,677.00. *Id.* On May 8, 2012, Los Prados recorded a notice of
4 default and election to sell pursuant to the lien, stating that the amount due was \$2,830.00. *Id.*

5 On October 11, 2012, Los Prados recorded a notice of foreclosure sale against the property.
6 *Id.* On November 9, 2012, Los Prados sold the property in a nonjudicial foreclosure sale to Rugged
7 Oaks in exchange for \$14,800.00. *Id.* On November 15, 2012, Los Prados recorded the deed of
8 foreclosure. *Id.*

9 On November 17, 2017, BNYM initiated this action. (ECF No. 1). In its amended
10 complaint, BNYM alleges four causes of action: (1) declaratory judgment that the foreclosure sale
11 was void; (2) declaratory judgment that BNYM may sell the property in a judicial foreclosure sale;
12 (3) judicial foreclosure; and (4) injunctive relief. (ECF No. 20).

13 Now, defendants move to dismiss, arguing that the statute of limitations bars all of
14 BNYM’s claims. (ECF No. 27).

15 **II. Legal Standard**

16 A court may dismiss a complaint for “failure to state a claim upon which relief can be
17 granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “[a] short and plain
18 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell*
19 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed
20 factual allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
21 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

22 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550
23 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
24 matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. 662, 678 (citation
25 omitted).

26 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
27 when considering motions to dismiss. First, the court must accept as true all well-pled factual
28 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.

1 *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by conclusory
2 statements, do not suffice. *Id.* at 678.

3 Second, the court must consider whether the factual allegations in the complaint allege a
4 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff’s complaint
5 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the
6 alleged misconduct. *Id.* at 678.

7 Where the complaint does not permit the court to infer more than the mere possibility of
8 misconduct, the complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.*
9 (internal quotation marks omitted). When the allegations in a complaint have not crossed the line
10 from conceivable to plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at 570.

11 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,
12 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

13 First, to be entitled to the presumption of truth, allegations in a complaint or
14 counterclaim may not simply recite the elements of a cause of action, but must
15 contain sufficient allegations of underlying facts to give fair notice and to enable
16 the opposing party to defend itself effectively. Second, the factual allegations that
are taken as true must plausibly suggest an entitlement to relief, such that it is not
unfair to require the opposing party to be subjected to the expense of discovery and
continued litigation.

17 *Id.*

18 **III. Discussion**

19 As a preliminary matter, the court will deny BNYM’s motion to file supplemental
20 authorities (ECF No. 61) as the authorities pertain to the application of NRS 116.3116 *et seq.*,
21 which is irrelevant to the court’s analysis here.

22 In their motion to dismiss, defendants argue that the statute of limitations bars BNYM’s
23 claims. (ECF No. 27). The court agrees.

24 BNYM’s first three claims request that the court declare that the HOA foreclosure sale did
25 not extinguish the deed of trust and order a foreclosure sale of the property. (ECF No. 20).
26 However, because the court cannot grant such relief without holding that BNYM’s interest in the
27 property is superior to all others, BNYM’s first three claims are nothing more than a repackaged
28 quiet title claim.

1 “To prevent plaintiffs from making a mockery of the statute of limitations by simple
2 expedient creative labelling [sic] . . . courts must necessarily focus upon the substance of an
3 asserted claim as opposed to its form.” *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688 (9th
4 Cir. 1993) (citation omitted). Because BNYM’s amended complaint effectively requests quiet title
5 and injunctive relief, the court will accordingly address those claims.

6 *a. Quiet title*

7 NRS 11.070 sets forth a five-year limitations period for quiet title claims. Nev. Rev. Stat.
8 11.070. Los Prados recorded the foreclosure sale with the Clark County recorders office on
9 November 15, 2012. (ECF Nos. 20, 27). BNYM brought this lawsuit more than five years later,
10 on November 17, 2017. (ECF No. 1). Accordingly, the statute of limitations bars BNYM’s quiet
11 title claim.

12 *b. Injunctive relief.*

13 The court will dismiss plaintiffs fourth claim because injunctive relief standing alone is not
14 a cause of action. *See, e.g., In re Wal-Mart Wage & Hour Emp’t Practices Litig.*, 490 F. Supp. 2d
15 1091, 1130 (D. Nev. 2007); *Tillman v. Quality Loan Serv. Corp.*, No. 2:12-CV-346-JCM-RJJ,
16 2012 WL 1279939, at *3 (D. Nev. Apr. 13, 2012); *Jensen v. Quality Loan Serv. Corp.*, 702 F.
17 Supp. 2d 1183, 1201 (E.D. Cal. 2010).

18 **IV. Conclusion**

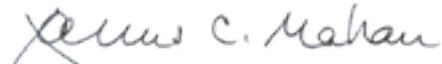
19 In light of the foregoing, the court will dismiss with prejudice BNYM’s claims because
20 BNYM failed to allege plausible claims as a matter of law.

21 Accordingly,

22 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the defendants’ motion to
23 dismiss (ECF No. 27) be, and the same hereby is, GRANTED with prejudice.

24 IT IS FURTHER ORDERED that BNYM’s motion for leave to file supplemental
25 authorities (ECF No. 61) be, and the same hereby is, DENIED.

26 DATED November 1, 2018.

27 
28 UNITED STATES DISTRICT JUDGE